



Janice K. Brewer
Governor

State Of Arizona Board of Podiatry Examiners

"Protecting the Public's Health"

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Barry Kaplan, DPM; Joseph Leonetti, DPM; Barbara Campbell, DPM;
M. Elizabeth Miles, Public Member; John Rhodes, Public Member; Sarah Penttinen, Executive Director

BOARD MEETING MINUTES

November 13, 2013; 8:30 a.m.
1400 West Washington St., B1
Phoenix, AZ 85007

Board Members: Joseph Leonetti, D.P.M, President
Barry Kaplan, D.P.M., Member
Barbara Campbell, D.P.M., Member
M. Elizabeth Miles, Secretary-Treasurer
John Rhodes, Public Member

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Marc Harris
Michael Raine

I. Call to Order

II. Roll Call

III. Approval of Minutes

a. October 9, 2013 Regular Session Minutes.

MOTION: Dr. Kaplan moved to approve the minutes as drafted. Dr. Campbell seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

The remaining agenda items were not reviewed in the order in which they appear.

IV. Review, Discussion and Possible Action –Review of Complaints

a. **11-34-C – Kenneth Blocher, DPM: Providing inaccurate billing / insurance coverage information; failure to properly diagnose and treat foot pain.**

Dr. Blocher was present. Dr. Dedrie Polakof was the investigator for the case and was present. Dr. Polakof provided the following summary: the patient went to Dr. Blocher due to pain in his right foot. The patient was disturbed because he had made several calls to Dr. Blocher's office and never received a call back from the doctor. He also feels he was misdiagnosed. (This allegation was added after the initial complaint was submitted.) Regarding the allegation of inaccurate billing / insurance information, the patient said Dr. Blocher's staff told him three times that his orthotics would be covered by his insurance. Staff was reportedly frustrated with him asking and showed him a worksheet which documented their call to his insurance. However, the patient later received a bill for the orthotics so he called his insurance company and got a copy of the telephone call transcript between Dr. Blocher's staff and his insurance. That call demonstrates that the staff asked about DME and deductibles but not specifically orthotics. The patient ended up going to the office of Drs. Lewis Freed and Luke Cicchinelli who performed surgery which resolved the patient's pain. The patient stated that the orthotics given to him by Dr. Blocher hit directly under the sesamoid bones where most of his pain was and he could not wear them.

Dr. Polakof concluded that she found the first allegation to be substantiated. She referenced a note in the patient's chart which states that Dr. Blocher's staff would check on insurance authorization and she feels this is a verbal contract which Dr. Blocher / his staff did not fulfill. Dr. Polakof found the second

allegation to be substantiated as well. She stated the patient had pain specifically on the medial upper arch under the first metatarsal head and the other doctors were able to treat his pain and resolve it. (Drs. Freed and Cicchinelli diagnosed a peroneal tear and performed a complete rearfoot reconstruction.) According to Dr. Freed and Dr. Cicchinelli's notes the orthotics from Dr. Blocher exacerbated the peroneal tear. Dr. Blocher did note in his chart that the patient had a severe "C-shaped" foot which is what was corrected with the reconstruction surgery.

Dr. Polakof confirmed for Dr. Leonetti that she spoke to the patient at length in person. The patient initially stated verbally that the pain was in the arch of the foot, but in person he pointed to the area of the sesamoid area near the first metatarsal head. Dr. Leonetti pointed out that the MRI shows a tear of the peroneus longus tendon which is not near the sesamoids. Dr. Polakof stated she was only reporting what the patient demonstrated and described to her. Dr. Polakof also confirmed for Dr. Leonetti that Dr. Blocher's staff had asked the patient's insurance about a deductible but did not ask specifically about coverage for orthotics. She also confirmed that the patient's second allegation was added later because the patient was frustrated that he could not speak directly with Dr. Blocher.

Dr. Kaplan noted that in the complaint information the patient acknowledges his awareness that he is responsible for payment for the orthotics and for knowing what his insurance will cover. He understands that insurance information can be confusing and sometimes patients can be given conflicting information, but the patient is ultimately responsible. Dr. Polakof agreed but added that when the patient called his insurance (after receiving the bill) he was told immediately that they were not covered. Dr. Polakof advised Dr. Leonetti that she was uncertain if Dr. Blocher called the patient's insurance himself or if it was his staff; the chart note only says that they would call. Both Dr. Kaplan and Dr. Leonetti stated they do not make those calls; their staff does. They agreed that the doctor cannot be held accountable for those types of staff actions. Dr. Polakof confirmed for Dr. Campbell that there were no letters of medical necessity submitted to the insurance company for this patient to get authorization for the orthotics. Mr. Rhodes asked if the patient had ultimately made payment, but that was unknown.

Dr. Blocher was present and addressed the Board. In regard to allegation 31, he stated his staff did not do much with orthotics and insurance coverage; they did their best they could. With allegation #2, the patient did not have tenderness in the sesamoid area upon palpation when he examined him, it was more arch pain. The patient had been working a lot in shoes that were not very good and had "over-sue" type symptoms. He felt orthotics would help but he is bothered that he never had a chance to reevaluate the patient. He also said that he only had one office visit with the patient so he does not feel it is fair to compare his care to the care given to the patient after the MRI ordered by another physician. Dr. Blocher continued and stated he would not typically order an MRI on the first office visit, and it would not be covered by insurance, unless there had been some sort of trauma. The orthotics were dispensed to the patient on January 18 and the patient saw Dr. Freed on January 21 so there was not really a chance to see if they worked. If he had a chance to re-evaluate the patient and there was no improvement he would have considered an MRI to see what else was going on.

Dr. Leonetti stated that it is consistent with the patient's symptoms to make a diagnosis of arch strain or plantar fasciitis; he feels it was a reasonable approach to treat the symptoms with orthotics. He added that it is easy for a second doctor to then rule out the initial diagnoses and move to an MRI, and if the patient had followed up with Dr. Blocher he could have done more to address the continued pain. With regard to the insurance issue, Dr. Leonetti stated it is unfortunate but it happens frequently at many doctor offices. He asked Dr. Blocher about the patient's claim that he made multiple attempts to contact the doctor but never got a return call. Dr. Blocher stated it was difficult to recall since this happened three years ago. He is an independent contractor in the office of Dr. Aprajita Nakra. He stated it is possible that messages were not given to him and that he would not intentionally blow off a patient's calls. He added that there is nothing in the chart regarding calls from the patient or the need to call him back.

Dr. Blocher clarified for Drs. Leonetti and Kaplan that he does not recall receiving a certified letter from the patient. Dr. Kaplan pointed out that the patient referenced trying to talk to the "office" about the insurance issue, not specifically the doctor. Ms. Miles stated that, from a patient perspective, the patient does not have the doctor's personal contact information so the only way for him to contact the doctor would be through the office. In discussion with Dr. Kaplan, Ms. Miles stated that even though Dr.

Blocher is an independent contractor and it is not his office, a patient would not know that and would have the perception that it is Dr. Blocher's office. Dr. Leonetti agreed but added that Dr. Blocher cannot really be blamed if staff did not give him messages. Ms. Miles expressed continued concern that the patient is "left holding the bag" due to lack of communication in the doctors' office; they have a doctor-patient relationship at that physical office so there is nothing else a patient can do. Dr. Leonetti agreed and also added that this is where independent contractor situations become confusing because the contractor cannot say how they want things to be done (regarding mail and other communication). He agreed there is a problem but does not feel Dr. Blocher can be blamed for it. Dr. Blocher confirmed for Dr. Campbell that the office staff from that time no longer work in his office. Ms. Miles stated that in general she does not want patients to feel that should have to contact their doctor in any other way than calling the office where they were seen; ultimately it is the doctor's responsibility as a professional to make sure patients can communicate with them regardless of any contractor agreement. Dr. Leonetti agreed and stated that if it was an ongoing issue with multiple complaints then it would be a problem; however, this is the only time this has come up for Dr. Blocher. Ms. Miles stated she agrees but wants to make sure the Board is not sending the wrong message that being an independent contractor alleviates a physician from all responsibility for what happens in their office. Drs. Kaplan and Leonetti also felt that if the patient had come back for another appointment he could have addressed this problem directly with the doctor, but there was only three days from when he received the orthotics to when he went to another doctor.

Dr. Polakof mentioned one additional finding which was that the billing for this patient was done under Dr. Nakra's billing numbers. Dr. Blocher stated that is how it is typically set up when working as an independent contractor; he receives a per diem and a percentage of revenue, but billing is done under the practice/corporate name which in this case is Dr. Nakra's name. Dr. Polakof confirmed that she did contact the patient's insurance and verified that Dr. Blocher has been an approved provider since 1999. However, she raised this concern because there was a similar case before the Board several years ago and in that case the Board found that there was a violation with the billing practices. Dr. Leonetti stated he was not concerned about that in this case. He feels it is similar to a physician working for a hospital or clinic where all billing is done under the facility's billing numbers. There were no other questions or discussion from the Board members.

MOTION: Dr. Leonetti moved to dismiss this case finding no violations. Dr. Kaplan seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed 4-1 by voice vote with Ms. Miles dissenting.

b. 11-42-C – Robert Fridrich, DPM: Failure to properly diagnose and treat an infection of the toe.

Dr. Fridrich was not present. Dr. Dedrie Polakof was the investigator for the case and was present. Dr. Polakof provided the following summary: the complaint was filed by the patient's son. The patient was an elderly woman in a skilled nursing facility. Nursing staff noticed a sore between the patient's right 4th and 5th toes. They called Dr. Fridrich for an emergency visit. Dr. Fridrich treated the wound, advised the nursing staff of the need for ongoing wound care and instructions for such care. He also advised that the patient needed a vascular consult. The patient had several additional visits with Dr. Fridrich but never followed through with getting the vascular consult. The patient was later transferred to another care facility and eventually her 5th toe was amputated. The patient has since passed away from other causes. Dr. Polakof stated she had a letter from the nursing staff at the original facility which states the patient was aware of the need for the vascular consult and that Dr. Fridrich provided very good care to her. She finds that Dr. Fridrich's notes are complete and appropriate and she finds no violations of the standard of care.

Dr. Kaplan and Ms. Miles both agreed that this was an unfortunate outcome but there is no issue with the care provided by Dr. Fridrich. The patient did not follow the instructions given to her. Dr. Polakof confirmed for Dr. Campbell that she had spoken with Dr. Fridrich who said he did all he could for the patient but she was a very large woman and required special transportation. He also stated the patient's insurance required a copay for that transportation and there had been some questions from the patient's son regarding the number of transports and the need for transporting her to receive care.

MOTION: Dr. Kaplan moved to dismiss this case finding no violations. Ms. Miles seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

c. 12-01-C – Steven Born, DPM: Insurance fraud for billing for orthotics.

Dr. Born was not present. The patient and his wife were present. Dr. Dedrie Polakof was the investigator for this case and was present. Dr. Polakof provided the following summary: the patient had tendon pain and went to Dr. Born for orthotics. When he received the orthotics, his wife thought they looked like over-the-counter products and researched them. (Spenco brand.) She found that they retailed for approximately \$30.00 but Dr. Born charged the insurance over \$500.00. When Dr. Polakof spoke to Dr. Born, he told her that he heats the orthotics to mold of the patient's feet and then dispenses them. Dr. Leonetti asked if the device in the picture submitted by the patient is what Dr. Born is calling a "custom" orthotic, which Dr. Polakof confirmed. The patient had the orthotics with him and provided them to the Board members to inspect. Dr. Polakof confirmed for Dr. Kaplan that the billing was sent to Medicare. Dr. Kaplan reviewed that Medicare does not cover orthotics and that Dr. Born had used the billing code L4396KXRT which is a DME billing code. Dr. Kaplan also reviewed the office visit codes that were billed which were 99204 for the initial visit and 99214 for subsequent visits. Dr. Polakof stated she did not find enough documentation specifically in the chart to support the first 99204, but there was additional information in a letter Dr. Born sent to another physician treating this patient. The other visits would require at least 25 minutes for the code 99214 but there is only one line of notes in the chart for each date of service which does not seem to support using that code.

Dr. Kaplan stated he was concerned about all of the billing codes being used; since Medicare does not cover orthotics, he feels that the codes used by Dr. Born are fraudulent. He reviewed that custom orthotics are covered, but only if they are an integral part of a covered brace and medically necessary for the proper function of the brace. He also feels the "KX" modifier was misused. He feels that there were/are probably many other cases where this type of billing was done.

The patient addressed the Board and confirmed that plaster casts were made of his feet. Dr. Born told him that Medicare would cover the orthotics. On every office visit he saw many other patients getting the same orthotics as he received. The patient's wife stated she researched the orthotics and called the Spenco company. She was told they do not make custom orthotics and that they only came in different shoe sizes. Mr. Rhodes asked the patient if the orthotics were heated or molded to his feet. The patient said he did not think so, and he confirmed for Dr. Campbell that the casting was not done by Dr. Born but by one of his office staff. The patient's wife told the Board members she asked Dr. Born's staff what the cost would be in light of their secondary insurance and was told it would vary from \$150.00 and up. She also stated that the secondary insurance did not pay at all because all DME is supposed to go through a particular company.

In further discussion, Dr. Polakof explained to Dr. Kaplan what she was told by Dr. Born in that he casts the patient's feet, makes a negative from the cast, and then molds the orthotics to the negative and replaces the top cover. Dr. Born asserted to Dr. Polakof that they were "custom" orthotics and that their need was justified by the patient having tendonitis and an abnormal gait. Dr. Kaplan stated he thinks the patient's orthotics look exactly like the plain Spenco items and he feels this is a case of fraudulent billing. Dr. Leonetti agreed and stated he was upset that these were dispensed to the patient as "custom" when they clearly have not been modified at all and the top cover was never separated from the plate. Dr. Leonetti confirmed for Ms. Miles that he does not use Spenco orthotics but has seen them many times and the orthotics brought in by the patient look like they came straight out of the box.

MOTION: Dr. Kaplan moved to go into Executive Session for the purpose of obtaining legal advise. Dr. Campbell seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote and the Board adjourned into Executive Session at 9:51 a.m.

The Board returned to Regular Session at 9:59 a.m.

Dr. Kaplan asked if Dr. Born has two different offices because he sees two different addresses on paperwork in the patient's chart. Dr. Polakof confirmed that he only has one address; the other is his home address and Dr. Born's wife sometimes works on billing at home. Dr. Kaplan asked the patient how many other patients he saw being casted for orthotics. The patient said he never saw anyone being casted but he saw them receiving orthotics from one of the staff members. The patient was not able to say if other patient's orthotics were the same as his (Spenco brand). Dr. Leonetti stated he would like to table this case for further investigation to evaluate more charts and see if this type of billing is a pattern. He would like to look at patients with similar circumstances as this patient as far as medical need and insurance (Medicare). Dr. Leonetti advised that Dr. Born should be made aware of the investigator coming so he can prepare the necessary information for review. There was brief discussion regarding how far back the investigator should look and the Board agreed on reviewing charts from January 1, 2011 to present. Mr. Harris advised that it would be beneficial to determine if the billing practices seen in this case have since been modified or if it is an ongoing issue. He also advised that the Board will need to be mindful of the effective dates of Board statutes regarding billing violations. It was decided that a minimum of 25 charts would be reviewed and should include review of office visit codes, orthotics and DME for Medicare patients. That number may increase depending on what percentage of Dr. Born's practice is made up of Medicare patients.

MOTION: DR. Leonetti moved to table this case for further investigation as discussed above. Dr. Kaplan seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

d. 12-14-C – Joseph Dobrusin, DPM: Improper diagnosis of left foot fracture.

Dr. Dobrusin was present with attorney Elizabeth Peterson. Dr. Jerome Cohn was the investigator for this case and was present. Dr. Cohn provided the following summary: The patient presented to urgent care with a possible left foot injury. X-rays showed no findings. The patient then saw Dr. Dobrusin who ordered an MRI and diagnosed a stress fracture of the 2nd metatarsal head. He placed the patient in a walking boot. Chart notes from the last office visit on November 15, 2011 indicate the fracture was not healed enough to be discharged. Dr. Cohn noted he could not find any documentation regarding Dr. Dobrusin wanting the patient to come back for follow-up. Dr. Cohn spoke with the patient who told him that at her last office visit she was still having pain but was told she would be okay. Dr. Cohn also spoke with Dr. Dobrusin who told him that he wanted the patient to return but there is no specific documentation of that. Apparently the patient had another appointment scheduled but missed it and there was no follow-up from Dr. Dobrusin's office regarding that. However, the patient stated she was not told of any need for additional visits. Dr. Cohn stated that due to this conflict in information his conclusion is undetermined as to whether or not there is any violation.

Dr. Leonetti asked to review the patient's x-rays. (The CD of films provided by Dr. Dobrusin could not be opened by Board staff but the Board members were able to view his x-rays using Ms. Peterson's computer.) Dr. Cohn confirmed for Dr. Leonetti that the patient said she was never told that she needed to come back after November 15). Also, the patient was later treated by Dr. Jeffrey Weiss who diagnosed a delayed union of the fracture. The treatment with Dr. Weiss was several months after the patient stopped seeing Dr. Dobrusin which was attributed to the patient needing to care for her husband following heart surgery. Dr. Cohn confirmed for Dr. Leonetti that the x-rays from Dr. Dobrusin show the fracture but there was not enough healing to discharge the patient from care. Also, Dr. Weiss' x-rays also show delayed union / non-union of the fracture. Dr. Cohn concluded that the care provided by Dr. Dobrusin was appropriate; there just was not enough follow-up. Dr. Kaplan noted that the patient was 80 years old at the time and the last office visit was three months post-injury. Dr. Cohn confirmed for Dr. Kaplan that there was no documentation in the patient's chart of any attempt to contact the patient following her missed appointment. Dr. Kaplan stated he feels Dr. Dobrusin's care was correct while he was treating her but there should have been more follow-up care. Dr. Cohn confirmed for Dr. Campbell that there was no documentation in the chart regarding a referral for a CT or bone biopsy. Dr. Kaplan noted that there was a discrepancy in that the chart notes for the last office visit state that patient was asymptomatic, but the patient has stated she was still in pain at that time.

Dr. Dobrusin then addressed the Board. He stated this was a fairly straightforward case. He feels he made the correct diagnosis and treated the patient appropriately; the only concern was with the follow-up care. He pointed out the notes from the last office visit which state the patient was asymptomatic, was wearing a tri-lock ankle brace, and had no edema or point tenderness. The AP x-ray showed significant bony consolidation; the oblique view less so. He felt that was sufficient for the patient to ambulate and function. He advised the patient to continue with the brace and to avoid high-impact activities. He stated that historically with this type of fracture the patient will heal in time. He also pointed out that the notes state to continue with the brace for one to two months until complete consolidation can be seen on oblique view x-ray. He feels that is sufficient to demonstrate that the patient was aware of the need to return for additional care. When asked why the patient did not return to see him, Dr. Dobrusin stated he could only speculate that perhaps the duties of caring for her husband became more important or that she may have exacerbated her injury during that time. Dr. Dobrusin confirmed for Ms. Miles that he did not have any direct knowledge of that; he was only speculating.

Dr. Dobrusin and Ms. Peterson reviewed for Ms. Miles the notes from November 15 which they feel indicate the patient was made aware of the need for follow-up in one to two months. Dr. Cohn advised that that is where the confusion comes in because the patient is saying one thing and the doctor is saying another. Ms. Peterson stated that the patient may have misunderstood Dr. Dobrusin's instructions or possibly become confused in between the last time she saw Dr. Dobrusin and the time the complaint was filed. She added that there was nothing in the patient's chart to indicate the patient was discharged. Dr. Leonetti reviewed the specific verbiage of the office note which states, "Follow for 1-2 months until we see bony consolidation." He added that consolidation could not be assessed unless the patient returns; this note seems to indicate that the patient was expected to return. He also sees nothing in the chart to indicate that the patient was discharged. He feels if the patient was continuing to have problems she should have gone back to Dr. Dobrusin. Dr. Kaplan agreed and added that he feels the diagnosis and treatment of the fracture were appropriate.

MOTION: Dr. Kaplan moved to dismiss this case finding no violations. Mr. Rhodes seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

e. 12-27-C – Glen Robison, DPM: Improper care due to two pairs of inadequate orthotics; inadequate care due to excessive period of conservative treatment without success or relief; improper billing due to charging for inadequate / unnecessary orthotics.

Dr. Robison was present. The patient was not present but her husband was. Dr. Dedrie Polakof was the investigator for the case and was present. Dr. Polakof provided the following summary: The patient present to Dr. Robison due to bilateral foot pain and wanted a new pair of orthotics just like an old pair she had. Dr. Robison casted her for new orthotics. He ended up casting her three times. The patient said the first pair were comfortable but the top cover was too long. When they were trimmed they were no longer comfortable. A second casting was made and the patient was not happy with the second pair of orthotics and a third casting was done. In the meantime, the patient had had three (cortisone) injections over four months. The injections and orthotics did not provide pain relief so the patient went to Dr. Kerry Zang for treatment who then referred her to Dr. Todd Galle. Dr. Galle performed a plantar fasciotomy which provided great pain relief but the patient was still having to make adjustments to her orthotics. Dr. Polakof concluded that she felt the treatment provided by Dr. Robison was appropriate and she did not find any violations in this case. Dr. Polakof confirmed for Dr. Leonetti that the patient was casted three separate times and received three different pairs of orthotics from Dr. Robison, but the doctor only billed for one pair. Dr. Polakof also confirmed for Dr. Kaplan that the patient received another set of orthotics from Dr. Zang but they still needed adjustments. She added that the patient wanted orthotics just like her old ones but they are no longer made that way. There were no other questions from the Board to Dr. Polakof.

Dr. Robison was present. Dr. Leonetti stated he felt that Dr. Robison took the same treatment path he would have with orthotics and the injections to relieve the pain; when the patient was not happy he tried again (with the orthotics) with the ultimate goal to make the patient happy. There was no rush to surgery and it was appropriate to try conservative treatments first. Dr. Leonetti continued that three injections is

not excessive and added that sometimes a patient just does not get better despite appropriate treatment. Dr. Kaplan noted that, as discussed in another case today, when a patient goes to see a second doctor then first doctor has already ruled out some treatment options so it is easier for the second doctor to treat the patient successfully. In this case the next step was to go to surgery, and the patient still ended up needing orthotics. Dr. Kaplan stated he did not find any problems with the treatment Dr. Robison provided to this patient.

Dr. Campbell asked if Dr. Robison considered any tests such as an EMG. Dr. Robison stated the normal course of treatment for plantar fasciitis would be conservative treatment including orthotics, injections, stretching, and ensuring proper shoe gear prior to any discussion about surgery. He added that when the patient was not showing any improvement he ordered an MRI which confirmed plantar fasciitis. After the patient's last office visit she and her husband came to his office and the husband demanded \$100.00 for stress caused to his wife. Dr. Robison confirmed for Dr. Leonetti that the request for money was not for a refund for services but instead to get make them happy and they would leave him alone. Dr. Robison stated he has not had any personal contact with the patient or her husband since the last office visit. His staff sent a letter to the patients advising that she would have to find another doctor and he later received a records request from Dr. Zang's office. The patient and her husband continued to contact his billing office for what he believes to be the purpose of having their copays refunded.

The patient's husband then addressed the Board as follows (Note: the patient's husband did not speak of events in chronological order): The patient was unable to be present due to illness. The first pair of orthotics did not feel comfortable so a second pair was ordered. He believes Dr. Robison's chart shows five injections over eight months. The patient is diabetic and her diabetes doctor told her the orthotics from Dr. Robison were too stiff. When Dr. Robison went to cast her for the third pair of orthotics he was going to do so with her socks on which is when the patient decided she wanted a second opinion. Dr. Zang set up the surgery with Dr. Galle which went well. With the first pair of orthotics (from Dr. Robison) the patient tried to break them in for hours. With the second pair Dr. Robison decreased the break-in time to 10 minutes a day which the patient thought was wrong. After the third casting was taken they contacted Dr. Robison's office and told them to cancel the orthotics but they were made anyway. Dr. Robison had been on vacation and when he returned they decided to go to his office to talk to him. The patient's husband asked for a refund of \$119.04 which is what he thought was the cost of the orthotics but found out later they only cost \$67.00. When they went to Dr. Robison's office they told him that Dr. Zang said the MRI showed nothing so he wanted the \$119 back to put towards to cost of the MRI. Dr. Robison offered to refund all copays as well as the patient's insurance. The next day they had received the third pair of orthotics in the mail along with a letter advising that they would not receive a refund and the patient would need to find another doctor. They returned to Dr. Robison's office wanting to speak directly with him but the doctor would not do so. He feels the doctor lied to them just to get them out of the office. He also said the office staff laughed at him and his wife and called them names. Dr. Leonetti asked how the police became involved. The patient's husband said the office staff asked them to leave but they insisted on staying until the doctor left the office so he would have to talk to them so the staff called building security. The security guard said they would have to leave and called the police department. The police arrived at Dr. Robison's office and, according to the patient's husband, agreed that they should receive a refund from the doctor but still told them they had to leave. They left the office and sat in the building lobby while the patient was crying. The police then came back and asked why the patient and husband had returned. He told them they had never left and the officer stated they were trespassing and would have to leave the building completely. The patient's husband asserted several times that both he and his wife were absolutely calm the entire time and never became irate as reported by Dr. Robison and his staff.

The patient's husband confirmed for Dr. Kaplan that after the surgery performed by Dr. Zang the patient still needed orthotics and that she wanted them. He also confirmed that the first pair of orthotics made by Dr. Zang were good but needed to be trimmed. They were over-trimmed so a second pair had to be made, but the patient experienced significant relief immediately following the fasciotomy performed by him. Dr. Kaplan noted for the patient's husband that according to Dr. Robison's billing records there were only three injections done on his wife. Dr. Leonetti stated that conservative treatment in this case is what he would expect. After casting for the third pair of orthotics the patient decided to get a second opinion. He does not find any problems with the quality of care provided by Dr. Robison. Dr. Leonetti added that questions can arise in communication between the doctor and the patient/family members

and it can become contentious if one party is unhappy. The patient's husband interjected and stated that he feels Dr. Robison and his billing office are playing games with them in relation to threats to turn them over to a collection agency for unpaid bills. Dr. Leonetti stated he had no comment in that regard but finds that this appears to be a problem of bad communication. He finds the care was appropriate even if it was unsuccessful. Dr. Campbell agreed.

MOTION: Dr. Leonetti moved to dismiss this case finding no violations. Dr. Kaplan seconded the motion..

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

V. Review, Discussion and Possible Action – Probation / Disciplinary Matters

a. 09-17-B – J. David Brown, DPM: Monthly update.

Ms. Penttinen advised that the last report was received in October so the next report is due in January. She has not received any reports of non-compliance.

b. 11-09-M – Kelvin Crezee, DPM: Monthly update.

Ms. Penttinen has not received any proof of completion of the consent agreement requirements (providing the seminar on wrong site surgery). She stated Dr. Crezee may have already conducted some of the seminars that he planned to do but just has not submitted documentation of that.

c. 13-05-B – Kathleen Stone, DPM: Monthly update.

Ms. Penttinen advised that the last report from Dr. Stone's counselor was received in September so the next one is due in December. She also received a call from DEA inquiring about the status of Dr. Stone's license. It appears DEA is going to be reinstating Dr. Stone's registration with them so she should soon be able to dispense drugs/devices from her office again.

VI. Review, Discussion and Possible Action on Administrative Matters.

a. Review of A.R.S. §32-3213 regarding advertising by healthcare professionals.

Dr. Kaplan had asked for this to be placed on the agenda to review advertising requirements for podiatrists. He had seen an advertisement from a podiatrist which did not have the designation of what type of medicine he practiced. He believed there was a law regarding advertising and stating the type of medical license held by the doctor. He contacted Ms. Penttinen who confirmed the advertising requirements; however, it is not a very well-known law. He thought it might be beneficial to remind podiatrists about the advertising laws to minimize any future complaints in this regard. Dr. Kaplan asked Ms. Penttinen about the costs of mailing a notice to all licensees and also suggested the option of putting the relevant information on the Board's website. Ms. Miles agreed that putting information on the website would be beneficial and suggested that the information be communicated to the state Association for distribution to its members. She also stated that the Board should be wary of posting information on its website that pertains to other healthcare practitioners and perhaps a general statement would be more appropriate. She also has concerns that there may be conflicts if some laws such as this are specifically noted on the Board's website but not others. Ms. Penttinen confirmed that under Arizona Revised Statutes, Title 32, section 3200 et seq. covers all healthcare practitioners. Ms. Miles suggested that language on the Board's website should be a general statement that in addition to the Board's Statutes and Rules there are other laws pertaining to podiatry which our licensees should be aware of and provide a link to that information. The Board members were in agreement with that action and also advised Ms. Penttinen to send a letter to the President of the state Association, Dr. Alan Discont, regarding this.

b. Review of new license applications for:

- i. Dr. Melissa Galli.
- ii. Dr. Kelly Pirozzi.
- iii. Dr. Joseph Vella.
- iv. Dr. Holly West.

The Board members each reviewed all of the license applications as listed above.

MOTION: Dr. Leonetti moved to approve each of the applicants listed above to sit for the oral exam and to approve their license pending successful completion of that exam. Ms. Miles seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

VII. Executive Director's Report – Review, Discussion and Possible Action

a. Open complaint status report.

Ms. Penttinen reviewed that there are currently 64 open complaints including those that were on today's agenda. There are currently four cases scheduled for review at the December meeting.

VIII. Call To The Public

There were no requests to speak during the Call to the Public.

IX. Next Board Meeting Date:

a. December 11, 2013 at 8:00 a.m.

X. Adjournment

MOTION: There being no other business before the Board, Dr. Campbell moved to adjourn the meeting. Mr. Rhodes seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote and the meeting was adjourned at 11:22a.m.